

NOT INCLUDED IN  
BOUND VOLUMES

MHJ  
San Francisco, CA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIGNITY HEALTH & ST. FRANCIS  
MEMORIAL HOSPITAL; DIGNITY  
HEALTH d/b/a DOMINICAN  
HOSPITAL

Employer/Petitioner

and

Cases 20-UC-115160  
32-UC-115418

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, STATIONARY ENGINEERS  
LOCAL NO. 39

Union

ORDER

The Employer's Request for Review of the Regional Director's Decision and Order is denied as it raises no substantial issues warranting review.<sup>1</sup> In denying review, we note the Board's longstanding rule that "[i]n representation cases in general and unit clarification proceedings in particular, the Board looks to the actual, existing composition of units and to employees actually working to determine the composition of units, not to abstract grants of recognition." *Coca-Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993). Here, the Employer seeks to clarify a bargaining unit to exclude the position of chief engineer at St. Mary's Medical Center of San Francisco (St. Mary's); that position,

---

<sup>1</sup> No party requested review of the Regional Director's decision excluding from the relevant unit as supervisory the chief engineer positions at St. Francis Memorial Hospital and Sequoia Hospital of Redwood City, or his determination that the unit at Dominican Hospital of Santa Cruz should not be clarified to exclude the chief engineer position.

however, has been vacant since 2008, and there is no evidence that the Employer intends to fill the position in the foreseeable future.<sup>2</sup>

*National Association for the Advancement of Colored People*, 241 NLRB 430 (1979), on which the Employer relies, is distinguishable. In *NAACP*, the Board clarified a unit to exclude as supervisory eight program director positions, including two positions that were vacant at the time of the hearing: a director of economic development position and a director of membership position. These vacant positions, however, are not analogous to the chief engineer position at issue here, which had been vacant for five years at the time the instant unit clarification petition was filed. By contrast, the director of economic development position in *NAACP* was newly created, the director of membership position had been vacant for less than five months, and the duties of the latter position were “basically comparable” to those of the director of life membership, a position that was filled at the time of the hearing. *Id.* at 431–432. Moreover, the employer in *NAACP* established that all of the program director positions were supervisory (including the director of economic development position, which, although newly created, possessed well-defined duties and powers, including the authority to approve overtime).

Even assuming the long-vacant chief engineer position at St. Mary’s was otherwise eligible to be clarified, the evidence presented in this case falls far short of establishing that the position was supervisory. The Employer offered no testimony about the duties and responsibilities of Sam Jayme, the last occupant of the chief engineer

---

<sup>2</sup> The mere fact that the Employer’s expired collective-bargaining agreement with the Union may have required the chief engineer position to be filled is insufficient to establish the Employer’s intention to fill the position, especially in light of the long-standing vacancy.

position at St. Mary's. When Jayme was promoted to chief engineer, the Employer created and filled a new position at St Mary's: *supervising* chief engineer. We find the testimony of Vice President of Mission and Ancillary Services George Cherrie about the duties and responsibilities of Jayme's predecessor only marginally probative, since Jayme's predecessor occupied the position of chief engineer at St. Mary's at a time when the supervising chief engineer position did not exist. Finally, we reject the Employer's contention that the chief engineer position at St. Mary's is functionally equivalent to the chief engineer positions at other hospitals. No witness testified that it was, and the absence of such evidence is telling given that the other hospitals, unlike St. Mary's, do not have a supervising chief engineer position.

Dated, Washington, D.C., June 29, 2015.

---

PHILIP A. MISCIMARRA, MEMBER

---

KENT Y. HIROZAWA, MEMBER

---

HARRY I. JOHNSON, III, MEMBER

(SEAL)

NATIONAL LABOR RELATIONS BOARD